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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,571	08/30/2002	Gregory De Swarte	CM2187FM	7197

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THE PROCTER & GAMBLE COMPANY
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EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/070,571	DE SWARTE ET AL.	
	Examiner	Art Unit	
	Randall Chin	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11212006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 99/23910 (hereinafter WO '910).

As for claim 1, WO '910 discloses in Figs. 1-3 an elongated handle 12 for a toothbrush 10 having distal and proximal ends, the distal end being connected to a head 14, the handle comprising a first grip portion at 16 adjacent the proximal end of the handle for holding in the user's hand, the first grip portion 16 having what is deemed an ovoid cross-section which has a major axis and a minor axis, and a second grip portion at 18 (**just where** ribs/ridges 22 are in Fig. 3) for manipulation by the user's fingers, extending from the first grip portion 16 in the direction of the distal end of the handle, and having, at least in a region adjacent the first grip portion 16 an elliptical cross-section which has a major axis and a minor axis, wherein the major axis of the second grip portion 18 is perpendicular to the major axis of the first grip portion.

It is noted that Applicant's specification specifically defines the term "ovoid" on p. 3, lines 10-13, as meaning a "2-dimensional figure **approximately corresponding** to the typical lengthwise cross-section of an egg, that is a **generally rounded figure**

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having one end which is more pointed than the other" (emphasis added). It is the Examiner's position that such phrases as "approximately corresponding" and "generally rounded figure" here are rather broad recitations deemed met by WO '910 since there is no definitive standard set forth as to what may or may not be considered "ovoid" with such a broad definition.

As for claim 6, the first grip portion 16 is coated with elastomer at 20 (Figs. 1 and 3; p. 3, lines 18-21 and p. 6, lines 7-12).

As for claim 9, WO '910 teaches that the minor axis of the second grip portion extends between top and bottom surfaces thereof and at least one of the top and bottom surfaces has gripping ridges 22 thereon (Fig. 3).

As for claim 10, there is a third grip portion 18 (Fig. 3) distal the second grip portion, the third grip portion being both wider and deeper (merely a relative expression) than the second grip portion.

As for claim 11, the third grip portion 18 is coated with elastomer (Fig. 3; p. 3, lines 18-21).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1, 2-5, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '910.

As for claim 2 reciting that the ratio of the maximum length of the major axis of the first grip portion to the maximum length of the major axis of the second grip portion is from about 1.2:1 to about 1.8:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 3 reciting that the ratio of the major axis of the first grip portion to the minor axis of the first grip portion is from about 1.4:1 to about 1.1:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 4 reciting that the ratio of the major axis of the first grip portion to the minor axis of the first grip portion is from about 1.3:1 to about 1.1:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 5 reciting that the first grip portion has a longitudinal length of from 50 to 100 mm, it is well within the level of competence of one skilled in the art to have provided for such a length depending on the intended user (i.e., child or adult) as well as for providing a length for optimal gripping and manipulation.

With respect to claim 7 reciting that the ratio of the major axis of the second grip portion to the minor axis of the second grip portion is from about 1.3:1 to about 1.1:1, it is well within the level of competence of one skilled in the art to have provided for such a

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range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 8 reciting that the major axis of the second grip portion has a maximum length of from about 8 to about 14 mm, it is well within the level of competence of one skilled in the art to have provided for such a length for optimal gripping and manipulation.

With respect to claim 1, even assuming arguendo that the first grip portion of WO '910 fails to anticipate the recited "ovoid cross-section", it would have been obvious to one of ordinary skill in the art to have modified the shape of this section such that it is of "ovoid cross-section" in order to provide for optimal and enhanced gripping comfort for a user when manipulating the toothbrush. The recited "ovoid" shape is deemed merely a choice in shape or design and deemed well within the level of ordinary skill to select through optimization techniques when determining the most comfortable shapes for enhanced gripping comfort.

5. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hansen 4,850,735 (hereinafter Hansen '735).

As for claim 1, Hansen '735 discloses in Figs. 1b and 1f an elongated handle 14 for a toothbrush 10 having distal and proximal ends, the distal end being connected to a head 12, the handle comprising a first grip portion at **D-D** (Fig. 1b) "adjacent the proximal end of the handle" (a broad recitation) for holding in the user's hand, the first grip portion having what is deemed an ovoid cross-section which has a major axis and a

minor axis (see SEC D. in Fig. 1f), and a second grip portion at E-E (Fig. 1b) for manipulation by the user's fingers, extending from the first grip portion in the direction of the distal end of the handle, and having, at least in a region adjacent the first grip portion an elliptical cross-section (see SEC. E in Fig. 1f) which has a major axis and a minor axis, wherein the major axis of the second grip portion is perpendicular to the major axis of the first grip portion.

It is noted that Applicant's specification specifically defines the term "ovoid" on p. 3, lines 10-13, as meaning a "2-dimensional figure **approximately corresponding** to the typical lengthwise cross-section of an egg, that is a **generally rounded figure** having one end which is more pointed than the other" (emphasis added). It is the Examiner's position that such phrases as "approximately corresponding" and "generally rounded figure" here are rather broad recitations deemed met by Hansen '735 since there is no definitive standard set forth as to what may or may not be considered "ovoid" with such a broad definition.

As for claim 10, there is a third grip portion distal the second grip portion, the third grip portion being both wider and deeper (merely a relative expression) than the second grip portion.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen '735.

As for claim 2 reciting that the ratio of the maximum length of the major axis of the first grip portion to the maximum length of the major axis of the second grip portion is from about 1.2:1 to about 1.8:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 3 reciting that the ratio of the major axis of the first grip portion to the minor axis of the first grip portion is from about 1.4:1 to about 1.1:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 4 reciting that the ratio of the major axis of the first grip portion to the minor axis of the first grip portion is from about 1.3:1 to about 1.1:1, it is well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 5 reciting that the first grip portion has a longitudinal length of from 50 to 100 mm, it is well within the level of competence of one skilled in the art to have provided for such a length depending on the intended user (i.e., child or adult) as well as for providing a length for optimal gripping and manipulation.

With respect to claim 7 reciting that the ratio of the major axis of the second grip portion to the minor axis of the second grip portion is from about 1.3:1 to about 1.1:1, it is

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well within the level of competence of one skilled in the art to have provided for such a range only involves routine skill in the art for optimally gripping and manipulating the toothbrush.

As for claim 8 reciting that the major axis of the second grip portion has a maximum length of from about 8 to about 14 mm, it is well within the level of competence of one skilled in the art to have provided for such a length for optimal gripping and manipulation.

With respect to claim 1, even assuming arguendo that the first grip portion D-D of Hansen '735 fails to anticipate the recited "ovoid cross-section", it would have been obvious to one of ordinary skill in the art to have modified the shape of section D-D (i.e., SEC D. in Fig. 1f) such that it is of "ovoid cross-section" in order to provide for optimal and enhanced gripping comfort for a user when manipulating the toothbrush. The recited "ovoid" shape is deemed merely a choice in shape or design and deemed well within the level of ordinary skill to select through optimization techniques when determining the most comfortable shapes for enhanced gripping comfort.

Conclusion

8. Applicant's arguments filed 21 November 2006 have been fully considered but they are not persuasive.

Applicant's arguments are primarily based upon claim 1 and arguments that Figs. 1-3 of WO '910 (or Beals) merely show perspective views of the toothbrush and that none of the figures show the cross-section of the handle have been considered but are

deemed unpersuasive. Notwithstanding, one of ordinary skill in the art could still view these perspective views of Beals and could generally determine the basic, overall cross-sectional shapes of the first grip portion 16 and second grip portion 18 of Beals as shown in Figs. 1-3. Again, it is noted that Applicant's specification specifically defines the term "ovoid" on p. 3, lines 10-13, as meaning a "2-dimensional figure **approximately corresponding** to the typical lengthwise cross-section of an egg, that is a **generally rounded figure** having one end which is more pointed than the other" (emphasis added). It is the Examiner's position that such phrases as "approximately corresponding" and "generally rounded figure" here are rather broad recitations deemed met by WO '910 since there is no definitive standard set forth as to what may or may not be considered "ovoid" with such a broad definition as Applicant's.

Applicant's arguments pertaining to dependent claims 2-5, 7 and 8 rejected under 35USC103 are not specifically addressed by Applicant and are merely dependent on the arguments set forth for independent claim 1. Basically, dependent claims 2-11 stand or fall with independent claim 1.

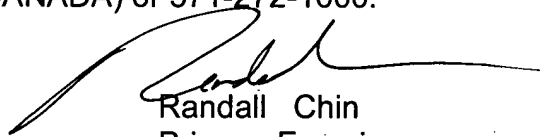
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Randall Chin
Primary Examiner
Art Unit 1744